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Federal Communications Commission
Office of Secretary
USWEST

Elridge A. Stafford
Executive Director-
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 27, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222, SC-1170
Washington, DC 20554

RE: Customer Proprietary Network Information, CC Docket No. 96-115,
Non-Accounting Safeguards, CC Docket No. 96-149

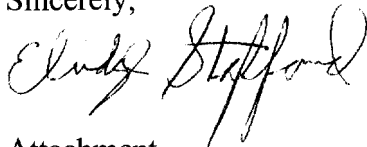
Dear Ms. Salas:

In accordance with the Commission's rules governing ex parte presentations, please be advised that today, Kirven Gilbert, BellSouth, Robert Gryzmala, SBC, Kathryn Krause, U S WEST, Joseph Mulieri, Bell Atlantic, Celia Nogales, Ameritech, Michael Pabian, Ameritech, and the undersigned met with Paul Gallant, Legal Advisor to Commissioner Tristani. The purpose of this meeting was to present a coalition position on CPNI issues. The attached material covers the points that were discussed.

In accordance with Section 1.1206(a)(2) of the Commission's Rules, the original and one copy of this letter are being filed with your office for inclusion in the public record for the above-mentioned proceedings. Acknowledgment of date of receipt of this transmittal is requested. A duplicate of this letter is provided for this purpose.

Please contact me if you have any questions.

Sincerely,



Attachment

cc: Mr. Paul Gallant

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List ABCDE

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A Coalition Position on CPNI

CC Docket No. 96-115

and

CC Docket No. 96-149

January 27, 1998

Ameritech

SBC

Bell Atlantic

U S WEST

BellSouth

January 27, 1998

**Federal Communications Commission
Office of Secretary**

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Outline of Coalition Positions on CPNI

- CPNI Rules Must Accommodate Customers' Reasonable Expectations of Privacy:
 - Where there is an Existing Business Relationship, Notice & Opt-Out is the Best "Approval" Method for Both Customers & Carriers,
 - Where there is an Existing Business Relationship, an Affirmative Consent Requirement Would be Bad for Consumers and Their Serving Carriers,
 - Notice & Opt-Out Promotes First Amendment Values,
 - Disclosure of CPNI to Any Party Outside the Carrier's Corporate Family Requires Specific Customer Authorization.
- The Act Requires Even-Handed Application of Section 222 to All Telecommunications Carriers.
- CPNI is Central to Joint Marketing.
- The FCC's Approach to Interpreting "Telecommunications Service" Should Be Guided by Customer Expectations and Reflect Converging Technologies and Services.
- The BOC-specific CPNI Rules Have Been Displaced by Section 222.

CPNI Rules Must Accommodate Customers' Reasonable Expectation of Privacy

- Section 222 is intended to preserve, not sacrifice, customer privacy expectations.
- A significant majority of customers trust their current carriers to use and protect their record information [Westin study, Q 2C].
- Customers expect their current carrier [Westin study] and affiliate companies [CitiBank study] to use their CPNI to market, provision, and provide customer care across a range of products and services - a/k/a “one-stop shopping.”
- Some market segments have an even greater interest in receiving product information from businesses they patronize [Westin survey, Q 7 &9]:
 - Younger Americans
 - African Americans
 - Hispanics
 - Women.

Where There is An Existing Business Relationship, Notice & Opt-Out is The Best “Approval” Method for Both Customers & Carriers

- **Notice & Opt-out is Best for Relationship:**
 - Consistent with statutory language and legislative history
 - Earlier iterations of statute include term “affirmative;” deleted from Section 222,
 - Is consistent with Commission policy with respect to privacy and commerce (e.g., CPNI multiline requirements, TCPA proceeding, CPN proceeding),
 - Reflects other industries’ methods (marketers, cable companies, video rentals)
 - Consumers have familiarity with approach.
- **It is Best for Consumers:**
 - Does not impose burdens on consumers to take their valuable time to affirm reasonable consumer expectations and commercial practices (use of commercial information, sharing among affiliate corporations),
 - Record evidence demonstrates that use of “notice & opt-out” increases customer comfort with internal use of CPNI (Westin Survey, Q 11 & 12),
 - Is a model generally endorsed by Administration privacy efforts,
 - NTIA
 - IITF Privacy Working Group.

Where There is An Existing Business Relationship, Notice & Opt-Out is The Best “Approval” Method for Both Customers & Carriers

- **It is Best for Business:**

- Does not impose burdens that would impede legitimate and expected commercial uses of business information, including target marketing,
- Accommodates fair CPNI practices by providing full and fair disclosure to customers to exercise their personal choice regarding those uses,
- Comports with customers’ expectations that their carrier--
 - will protect the privacy of their CPNI, and
 - will communicate with them from time to time regarding services/products they may need or want.

Where There is An Existing Business Relationship, An Affirmative Consent Requirement Would Be Bad For Consumers and Their Serving Carriers

- **An affirmative consent requirement imposes an unwarranted “need to act” on consumers to maintain the *status quo*:**
 - Record evidence supports consumers comfort with *status quo* (internal use is expected; third-party disclosure should be supported by something more),
 - CPNI use is not a matter of significant interest to consumers and it is difficult to create reflection and engagement on the issue,
 - Except where consumer initiates transaction during which CPNI use is discussed, **predictable** consumer inertia results in affirmative consent not being provided,
 - written approvals cannot be secured and are at odds with movement toward “paperless society,”
 - 90% oral approval on inbound calls does not translate into high overall number of approvals because only 15% of customers place calls to the business office (Ameritech),
 - Outbound calls in particular do not replicate the inbound calling experience; customers are disinterested, perplexed, and telephony averse (U S WEST).

Notice & Opt-Out Promotes First Amendment Values

- If failure to secure affirmative consent denies a carrier's access, use and disclosure of CPNI across affiliate companies, a carrier is cut off from valuable commercial information.
- Lawful and legitimate uses of commercial record information facilitate:
 - Targeted marketing to those individuals most likely to be interested in product/service,
 - Outbound telemarketing efforts to both existing customers (based on known characteristics) and potential customers (based on predictions).
- Restrictions on the use of commercial information, barring affirmative consent of the individual, compromise First Amendment values and depress lawful commercial speech.

Disclosure of CPNI to Any Party Outside of the Carrier's Corporate Family Requires Specific Customer Authorization

- All telecommunications carriers have a legal duty to protect proprietary information of, and relating to, their customers.
- The Act is clear that if the customer requests in writing that their carrier disclose CPNI to any party, a carrier must do so.
- Telephone companies have earned customer trust by protecting their information from unauthorized release to third parties.
- Third party authorization methods must provide sufficient assurance that the customer has authorized the disclosure of CPNI:
 - U S WEST focus group [June 1996 Opening Comments FN42],
 - Cincinnati survey [June 1996 Opening Comments].

The Act Requires Even-Handed Application of Section 222 to All Telecommunications Carriers

- Section 222 of the statute applies by its terms to all telecommunications carriers that receive or obtain CPNI:
 - Where Section 222, was intended to apply to fewer than all carriers, such intentions were expressly stated - e.g., Section 222(c)(3),
 - There are no BOC-only provisions in Section 222,
 - The legislative history associated with Section 222 demonstrates Congress' deliberate shift from BOC-only provisions to competitively neutral "every-carrier" provisions,
 - Congress sought to address, in a comprehensive way, both the privacy and competitive concerns associated with CPNI, by enacting Section 222,
 - CPNI issues are governed exclusively by Section 222.

The Act Requires Even-Handed Application of Section 222 to All Telecommunications Carriers

- IXC CPNI is no less valuable than LEC CPNI:
 - AT&T boasts: “We now have a database with information about nearly 75 million customers. We know their wants, needs, buying patterns, and preferences,”
 - MCI claims databases that contain more than 300 million sales leads and up to 3,500 fields of information about 140 million customers and prospects,
 - Uneven application of Section 222 will burden individual carriers and interfere with efficient competition.

CPNI is Central to Joint Marketing

- CPNI is critical to those activities the FCC has identified as basic to any joint marketing activity:
 - responding to customer inquiries,
 - performing sales functions,
 - processing orders for service requested,
 - other activities on a case by case basis.
- The Commission's orders recognize the value of CPNI to effective joint marketing:
 - identifying potential customers and formulating proposals to those customers - Phase II Supplemental NPRM, CC Docket No. 85-229, FCC 86-253, released 6/16/89, at para. 55,
 - identifying certain customers whose telecommunications needs are not being met effectively and to market an appropriate package of enhanced and basic services to such customers - Phase II Reconsideration. Order, 3 Rcd. 1150 (1988), para. 97.

CPNI is Central to Joint Marketing

- A BOC's use of CPNI to support joint marketing and sales, or its providing CPNI to an affiliate for such purpose, are activities permitted to be done within Section 272(g)(3) on an exclusive basis.

The FCC's Approach to Interpreting "Telecommunications Service" Should Be Guided by Customer Expectations and Converging Technologies & Services

- A narrow definition of "telecommunications service" would serve neither to protect consumer privacy nor promote competition.
- The FCC's original, tentative interpretation of "telecommunications service" is already out of date:
 - Services currently available to customers cannot easily be placed into one of three buckets, e.g., wireless/wireline,
 - The proposed buckets make no sense in the wireless context.
- Statutory language can be fairly construed to support a "single bucket" interpretation, encompassing all telecommunications service offerings made to a customer (comparison to Section 222(f); Section 222(c)(1)(B)).

The BOC-Specific CPNI Rules Have Been Displaced by Section 222

- The Commission's Computer III CPNI objectives are met via the provisions of the 1996 Act.
- In enacting Section 222 Congress evidenced intent to be comprehensive and have one set of rules for the entire industry:
 - CI-III
 - CPE
 - Cellular.
- The Commission should implement one set of CPNI rules in accordance with the Act's clear mandate that all carriers and their customers be treated equally.